

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MIKE E. LEPPALA,

Plaintiff,

v.

CAROLYN W. COLVIN, *Acting*  
*Commissioner of Social Security,*

Defendant.

CASE NO. C12-0964-JCC

ORDER

The Court, having reviewed Plaintiff's Complaint (Dkt. No. 1-2), the Report and Recommendation of United States Magistrate Judge Brian A. Tsuchida (Dkt. No. 17), Plaintiff's objections (Dkt. No. 19), and the remaining record, hereby ADOPTS the Report and Recommendation with modifications as explained herein.

**I. BACKGROUND**

Plaintiff's applications for disability insurance benefits and supplemental security income were denied at the initial level and on reconsideration. Following a hearing on February 25, 2011, the administrative law judge ("ALJ") found Plaintiff not disabled and denied benefits. The Appeals Council thereafter denied Plaintiff's request for review on March 23, 2012.

Plaintiff sought review of the Commissioner's decision in this Court. In a report submitted on February 6, 2013, Magistrate Judge Tsuchida recommended reversing and remanding the matter for further administrative proceedings pursuant to sentence four. Plaintiff

1 timely submitted objections to Judge Tsuchida's report. (Dkt. No. 19.) Defendant filed a  
2 response with no substance, merely requesting that the Commissioner's findings regarding  
3 Plaintiff's physical RFC and credibility be affirmed.

4 **II. DISCUSSION**

5 The Court must make a *de novo* determination of those portions of a magistrate judge's  
6 report or recommendations to which a party timely objects. 28 U.S.C. § 636(b)(1).

7 **A. Plaintiff's Physical RFC**

8 In his first objection, Plaintiff requests that the Court decline to affirm the ALJ's finding  
9 that Plaintiff has the residual functional capacity for light work "even when the Report and  
10 Recommendation finds that the evidence shows that he is limited to sedentary work." (Dkt. No.  
11 19.) As Plaintiff notes, the Report and Recommendation finds that the ALJ misinterpreted the  
12 opinion of the State Agency Medical Consultant, who *actually* found that Plaintiff was limited to  
13 sedentary work rather than light work. Further, Plaintiff explains, the "Report and  
14 Recommendation appears to find that the ALJ erred when he found Plaintiff had the residual  
15 functional capacity for light work rather than sedentary work," and "affirm[ed] the ALJ's finding  
16 Mr. Leppala [*sic*] had the physical RFC to perform sedentary work." (Dkt. No. 17 at 8.)  
17 However, according to Plaintiff, the ALJ never found that Mr. Leppala had the physical RFC to  
18 perform sedentary work, and thus expresses the concern that "affirming the ALJ's RFC finding"  
19 is actually affirming the "light work" determination. Finally, Plaintiff reasons, the "ALJ's  
20 determination that Plaintiff could perform light, rather than sedentary work is not harmless  
21 error." (Dkt. No. 19 at 3.)

22 The Court believes that Plaintiff misreads the Report and Recommendation. In its  
23 conclusion, the R&R recommends that this Court affirm the ALJ's findings as to Mr. Leppala's  
24 "physical or exertional RFC . . . [*a*]s discussed above[.]" (Dkt. No. 17 at 15.) As the Report and  
25 Recommendation discusses to some extent, and which Plaintiff recognizes, Judge Tsuchida  
26 recommends finding that the ALJ *erred* in concluding that Mr. Leppala had a physical RFC for

1 “light work” (Dkt. No. 17 at 8) based on the erroneous interpretation of Dr. Hoskin’s opinion.  
2 Instead, the R&R affirmed the ALJ’s alternative holding that Plaintiff could have a physical RFC  
3 of “sedentary work” but is nonetheless “not disabled” because jobs within that category exist that  
4 Plaintiff could perform.

5 To the extent that the R&R is not clear, this Court finds that the ALJ erred in concluding  
6 that Plaintiff had the RFC to complete “light work.” Instead, the evidence, as discussed in the  
7 R&R, only supports a finding that Plaintiff had the RFC for “sedentary work.” On remand, the  
8 ALJ is directed to assume that Plaintiff’s RFC is limited to sedentary work in any future  
9 proceedings. However, the Court overrules Plaintiff’s objection to the extent that he seeks an  
10 order directing the ALJ to reconsider Plaintiff’s physical RFC and to re-conduct the step-five  
11 analysis. As the R&R explained, the ALJ’s error in reaching the “light work” RFC conclusion  
12 was harmless given the alternative step-five holding, which Plaintiff has not seriously  
13 challenged. This Court agrees with that analysis, and accordingly declines to remand the instant  
14 matter on this basis. *See Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012) (Ninth Circuit  
15 adheres “to the general principle that an ALJ’s error is harmless where it is ‘inconsequential to  
16 the ultimate nondisability determination.’”) (collecting cases). Plaintiff’s objection is accordingly  
17 overruled to the extent that he requests a remand for reconsideration of his physical RFC.

#### 18 **B. The ALJ’s Credibility Findings**

19 Plaintiff next objects to the magistrate judge’s conclusion that the ALJ did not err in  
20 evaluating Plaintiff’s credibility with regard to Plaintiff’s “social functioning.” (Dkt. No. 19 at 5–  
21 8.) A claimant alleging disability based on subjective symptoms “must produce objective  
22 medical evidence of an underlying impairment which could reasonably be expected to produce  
23 the pain or other symptoms alleged.” *Smolen v. Chater*, 80 F.3d 1273, 1281–82 (9th Cir. 1996)  
24 (citing *Cotton v. Bowen*, 799 F.2d 1403, 1405 (9th Cir. 1986)). If the claimant meets that test, the  
25 ALJ may reject testimony regarding the severity of the claimant’s symptoms only if the ALJ  
26 makes specific findings stating clear and convincing reasons for doing so. *Id.* at 1284. The ALJ

1 may assess the claimant's credibility using traditional techniques; for example, an ALJ may  
2 discount a claimant's testimony based on his or her "reputation for truthfulness, inconsistencies  
3 either in his testimony or between his testimony and his conduct, his daily activities, his work  
4 record, and testimony from physicians and third parties concerning the nature, severity, and  
5 effect of the symptoms of which he complains." *Light v. Soc. Sec. Admin.*, 119 F.3d 789,  
6 792 (9th Cir. 1997).

7 Here, the ALJ found that Plaintiff's "medically determinable impairments could  
8 reasonably be expected to cause the alleged symptoms." (Dkt. No. 11–2 at 19.) Nonetheless, the  
9 ALJ discounted Mr. Leppala's testimony for five reasons: (1) the medical evidence did not  
10 corroborate his allegations and examination findings demonstrated some physical limitations, but  
11 not to the degree of disability; (2) Mr. Leppala's stated need for a cane was not supported by  
12 medical documentation; (3) Mr. Leppala helped his son build a gazebo and stated that he could  
13 perform daily living activities with the help of pain medication; (4) Mr. Leppala was not fully  
14 forthcoming about his substance abuse; and (5) Mr. Leppala received employment benefits  
15 during the first quarter of 2010, which the ALJ found to be inconsistent with Mr. Leppala's claim  
16 of disability since January 2010. (*See* Dkt. No. 17 at 10–14.)

17 Judge Tsuchida concluded that substantial evidence supported the ALJ's decision to  
18 discount Mr. Leppala's testimony based on the first and fourth findings, namely that Mr.  
19 Leppala's testimony was inconsistent with medical evidence; that Mr. Leppala could manage his  
20 pain with appropriate opiate medications; and that Mr. Leppala was not fully forthcoming about  
21 his substance abuse when he lied to his doctor about his drug use in the month he became  
22 disabled. (Dkt. No. 17 at 12–14.) Judge Tsuchida also noted that "the record shows that after his  
23 onset date, Mr. Leppala continued to use methadone into 2011 even though he testified he has  
24 been absolutely clean since 2009." (*Id.* at 14.) To support this, the R&R states that "[i]n March  
25 2011 [Mr. Leppala] was admitted to St. Joseph Hospital after a drug overdose and told the  
26 medical staff he was using 'street available methadone,' (Tr. 617) a statement which was

1 confirmed by a drug screen the hospital performed. Tr. 606.” (*Id.*)

2 Plaintiff objects to Judge Tsuchida’s conclusion that while some reasons were improper,  
3 the ALJ’s credibility finding is ultimately supported by substantial evidence. Specifically,  
4 Plaintiff acknowledges that he lied to his doctor in January 2010 about his recent methadone use,  
5 and merely “requests that the Court find that this single untruth, is not a clear and convincing  
6 reason for rejecting Plaintiff’s testimony.” (Dkt. No. 19 at 7.) Further, Plaintiff argues that Judge  
7 Tsuchida’s conclusion that the ALJ properly rejected his testimony because the record shows  
8 that opiate medications were relieving his pain was improper, because “based on the entire note,”  
9 upon which the ALJ and R&R relied to conclude that Plaintiff’s pain was relieved through  
10 opiates, it is clear that Plaintiff “reported a sedentary lifestyle, which was entirely consistent with  
11 his testimony.” (*Id.*) Finally, Plaintiff corrects errors in the R&R’s record citations, explaining  
12 that “[t]he record does not show that Plaintiff was using street available methadone at the time of  
13 his hospitalization [in March 2011], but that he had done so in the past.” Plaintiff also notes that  
14 “the drug screen cited by the Report and Recommendation is negative for methadone[,]” and that  
15 “the ALJ did not find that Plaintiff used methadone after January 2010.” (*Id.*)

16 The Court overrules Plaintiff’s objections to the R&R’s conclusion and affirms the ALJ’s  
17 credibility determination. Plaintiff’s first objection—that the “single untruth” when Plaintiff lied  
18 to his doctor about his methadone use is not a clear and convincing reason for discounting  
19 testimony—is simply without merit. First, while it was the only lie to which the ALJ pointed, it  
20 was not the only valid reason for discounting Mr. Leppala’s testimony. Thus, to argue that his  
21 testimony cannot be discounted on this basis alone misses the point—the ALJ provided  
22 numerous reasons for discounting Mr. Leppala’s testimony, multiple of which were valid. *See*  
23 *Molina*, 674 F.3d at 1115 (recognizing rule that error is harmless “where the ALJ provided one  
24 or more invalid reasons for disbelieving a claimant’s testimony, but also provided valid reasons  
25 that were supported by the record.”) (citations omitted). Because there was substantial evidence  
26 to support the finding that Mr. Leppala lied to his doctor in the month of his disability onset, the

1 ALJ was justified in relying on this basis, among others, to discount Mr. Leppala's testimony.

2 Second, Plaintiff's argument regarding the fact that Mr. Leppala's pain was managed  
3 with appropriate medication is similarly without merit. As Judge Tsuchida properly noted when  
4 Plaintiff raised this argument in the initial briefing, Plaintiff does not dispute that his pain could  
5 be managed, but merely asks the Court to "reweigh the evidence and adopt Mr. Leppala's  
6 interpretation of the evidence that his pain management was worse than the ALJ found." (Dkt.  
7 No. 17 at 12.) The Court is not inclined to do so. The ALJ was presented with the evidence,  
8 weighed it, and made appropriate findings. Judge Tsuchida was correct to conclude that this was  
9 a proper basis upon which to discount Mr. Leppala's testimony.

10 However, the Court agrees with Mr. Leppala that the R&R erroneously states that Mr.  
11 Leppala had used "street available methadone" in 2011 after his onset date, and that he had  
12 tested positive for methadone at that time. (Dkt. No. 17 at 14.) As Plaintiff properly notes, the  
13 record does not indicate that Plaintiff used "street available methadone" in 2011—rather, it only  
14 states that he had used it at some point in the past. (Dkt. No. 19 at 8 (citing Tr. 616–17).) Further,  
15 the drug screen to which the R&R cites does not, in fact, confirm Mr. Leppala's use for  
16 methadone, but instead indicates that he tested "negative" for such use. (Dkt. No. 19 at 8 (citing  
17 Tr. 606, 616–17).) Accordingly, this was not a valid reason for discounting Mr. Leppala's  
18 testimony, and the Court does not adopt that portion of the R&R. (See Dkt. No. 17 at 14 ¶¶ 7–  
19 11.) With the exception of this modification, however, the Court overrules Plaintiff's objection to  
20 Judge Tsuchida's recommendation and affirms the ALJ's decision to discount Mr. Leppala's  
21 testimony.

### 22 **III. CONCLUSION**

23 For the foregoing reasons, the Court hereby ADOPTS the Report and Recommendation  
24 (Dkt. No. 17) with the modifications explained herein. The Commissioner's decision is  
25 REVERSED and the case is REMANDED to the Social Security Administration for further  
26 proceedings consistent with this Order and the Report and Recommendation. The Clerk is

1 respectfully directed to send copies of this Order to the parties and to Judge Brian. A. Tsuchida.

2 DATED this 16th day of April 2013.

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9 John C. Coughenour  
UNITED STATES DISTRICT JUDGE